

AMENDED IN SENATE JUNE 7, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 605

Introduced by Assembly Member Portantino

February 25, 2009

An act to amend Section 19412 of add Sections 23396.6 and 25503.56 to the Business and Professions Code, relating to horse racing, and making an appropriation therefor, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 605, as amended, Portantino. ~~Horse racing: proposition parimutuel pool wagers.~~ *Alcoholic beverages: instructional tasting events.*

The Alcoholic Beverage Control Act contains various provisions regulating the application for, the issuance of, the suspension of, and the conditions imposed upon, alcoholic beverage licenses by the Department of Alcoholic Beverage Control. Existing law provides for various annual fees for the issuance of alcoholic beverage licenses depending upon the type of license issued. The Alcoholic Beverage Control Act provides that a violation of its provisions is a misdemeanor, unless otherwise specified.

This bill would authorize the department to issue to the holder of any off-sale retail license an instructional tasting license that would allow the licenseholder to allow an authorized licensee, as defined, or designated representative of that licensee, to conduct, on a designated portion of, or contiguous to, an existing licensed premises, an instructional event at which tastes of alcoholic beverages may be served to consumers, as provided. The bill would impose an original fee of \$300 and an annual renewal fee of \$261 for the license, which would be deposited in the Alcohol Beverage Control Fund. By expanding the

definition of a crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, for purposes of the Horse Racing Law, defines “proposition parimutuel pool” as the total wagers under the parimutuel system on propositions approved by the California Horse Racing Board that are based on the results of a live quarter horse or harness horse race or races.~~

~~This bill would permit thoroughbred horse racing results to be included in proposition parimutuel pool wagers.~~

~~Under existing law, all revenues distributed to the state as license fees from horse racing are required to be deposited in the Fair and Exposition Fund and are continuously appropriated to the Department of Food and Agriculture for various regulatory and general governmental purposes.~~

~~By expanding the definition of “proposition parimutuel pool” wagering to apply to additional forms of horse racing, this bill would authorize additional wagering, and would increase the amount of continuously appropriated license fees, thereby making an appropriation.~~

~~Vote: $\frac{2}{3}$ -majority. Appropriation: yes-no. Fiscal committee: yes. State-mandated local program: no-yes.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 23396.6 is added to the Business and
- 2 Professions Code, to read:
- 3 23396.6. (a) Notwithstanding any other provision of this
- 4 division, the department may issue to the holder of any off-sale
- 5 retail license an instructional tasting license for premises operated
- 6 in conjunction with the off-sale licensed premises.
- 7 (b) The provisions of Article 1 (commencing with Section 23770)
- 8 and Article 2 (commencing with Section 23815) of Chapter 5, and
- 9 Section 23958.4 of this code, and Section 64.2 of Title 4 of the
- 10 California Code of Regulations shall not apply to the issuance of
- 11 an instructional tasting license. Notwithstanding paragraph (3)

1 of subdivision (c), the provisions of Article 2 (commencing with
2 Section 23985) and Article 3 (commencing with Section 24011)
3 of Chapter 6, except for Section 23985.5 and 23986, shall apply
4 to the issuance of an instructional tasting license.

5 (c) An instructional tasting license authorizes the holder to
6 allow an authorized licensee, as defined in Section 25503.56, or
7 the designated representative of an authorized licensee, to conduct
8 an instructional event at which tastes of alcoholic beverages may
9 be served to consumers subject to the following limitations,
10 including the limitations set forth in Section 25503.56:

11 (1) The licenseholder shall restrict the instructional event to an
12 area that is in the portion of the licensed premises where alcoholic
13 beverages are exposed and offered for sale, and any contiguous
14 areas reasonably related to the merchandising or sale of alcoholic
15 beverages. The area where the instructional event is conducted
16 shall be separated from the remainder of the licensed premises by
17 a wall, rope, cable, cord, chain, fence, or other permanent or
18 temporary barrier and shall display signage prohibiting the
19 presence of persons under 21 years of age from entering the area.
20 The provisions of Section 25665 shall apply to the separated area
21 where the instructional event is conducted when the authorized
22 licensee is exercising tasting privileges set forth in Section
23 25503.56.

24 (2) The licenseholder bears responsibility for ensuring that
25 persons entering the instructional event area are of legal drinking
26 age. The licenseholder shall not allow any consumer attending the
27 instructional event to leave the event area with an alcoholic
28 beverage.

29 (3) The instructional tasting license shall not authorize the
30 licenseholder to conduct any on-sale retail sales to consumers
31 attending the instructional event.

32 (d) An applicant for an instructional tasting license under this
33 section shall, at the time of filing the application for the license,
34 accompany the application with a fee of three hundred dollars
35 (\$300). The annual renewal fee for a license issued pursuant to
36 this section shall be two hundred sixtyone dollars (\$261). Fees
37 collected pursuant to this section shall be deposited in the Alcohol
38 Beverage Control Fund.

39 SEC. 2. Section 25503.56 is added to the Business and
40 Professions Code, to read:

1 25503.56. (a) Notwithstanding any other provision of this
2 division, an authorized licensee, or a designated representative of
3 an authorized licensee acting as an agent of the authorized
4 licensee, may conduct, on the area specified by paragraph (1) of
5 subdivision (c) of Section 23396.6, an instructional event for
6 consumers on the subject of wine, beer, or distilled spirits,
7 including, but not limited to, the history, nature, values, and
8 characteristics of wine, beer, or distilled spirits, and the methods
9 of presenting and serving wine, beer, or distilled spirits.

10 (1) (A) Except as provided in subparagraph (B), and
11 notwithstanding any other provision of this division, the
12 instructional event may include the serving of not more than three
13 tastings in one day to an attendee of legal drinking age. A single
14 tasting of distilled spirits shall not exceed one-fourth of one ounce,
15 a single tasting of wine shall not exceed one ounce, and a single
16 tasting of beer shall not exceed three ounces. The wine, beer, or
17 distilled spirits tasted shall be limited to the products that are
18 authorized to be sold by the authorized licensee and the
19 licenseholder under its off-sale license.

20 (B) Except for a beer and wine wholesaler who is also a beer
21 manufacturer, an out-of-state beer manufacturer's certificate
22 holder, or who holds more than six distilled spirits wholesaler's
23 licenses, a beer and wine wholesaler may conduct an instructional
24 event, but may not serve tastes of beer.

25 (C) There shall be no charge for the tastings. The serving of
26 tastings shall not be deemed a sale of products pursuant to this
27 division.

28 (D) A person under 21 years of age shall not serve wine, beer,
29 or distilled spirits at the instructional event.

30 (E) All tastes shall be served by an employee of the authorized
31 licensee, the designated representative of the authorized licensee,
32 or by an employee of the designated representative of the
33 authorized licensee.

34 (F) An authorized licensee, or a designated representative of
35 an authorized licensee, shall either supply the wine or distilled
36 spirits to be tasted during the instructional event or purchase the
37 wine or distilled spirits from the licenseholder at the original
38 invoiced cost. An authorized licensee, or a designated
39 representative of an authorized licensee, shall purchase beer to

1 *be tasted during the instructional event from the licenseholder at*
2 *the original invoiced cost.*

3 *(G) Any unused wine, beer, or distilled spirits remaining from*
4 *the tasting shall be removed from the off-sale licensed premises*
5 *by the authorized licensee or its designated representative.*

6 *(2) If the instructional event is conducted by a designated*
7 *representative of an authorized licensee, the designated*
8 *representative shall not be owned, controlled, or employed directly*
9 *or indirectly by the licenseholder on whose premises the*
10 *instructional event is held.*

11 *(3) An instructional event shall be limited to a single type of*
12 *alcoholic beverage and tastes, if furnished, shall only be of that*
13 *type of alcoholic beverage.*

14 *(b) For purposes of this section:*

15 *(1) "Authorized licensee" means a winegrower, California*
16 *winegrower's agent, beer and wine importer, beer and wine*
17 *general importer, beer and wine wholesaler, wine rectifier, distilled*
18 *spirits manufacturer, distilled spirits manufacturer's agent, distilled*
19 *spirits general importer, distilled spirits rectifier, distilled spirits*
20 *general rectifier, rectifier, out-of-state distilled spirits shipper's*
21 *certificate holder, distilled spirits wholesaler, brandy*
22 *manufacturer, brandy importer, California brandy wholesaler,*
23 *beer manufacturer, or an out-of-state beer manufacturer certificate*
24 *holder. "Authorized licensee" shall not include an entity that solely*
25 *holds a combination of a beer and wine wholesale license and an*
26 *off-sale beer and wine retail license pursuant to Section 23817.8.*

27 *(2) "Licenseholder" means an off-sale retail licensee issued an*
28 *instructional tasting license pursuant to Section 23396.6.*

29 *(c) Notwithstanding subdivision (e), a licenseholder may conduct*
30 *an instructional event that includes the serving of tastings only*
31 *when an authorized licensee or its designated representative are*
32 *unable to conduct a scheduled instructional event, provided the*
33 *licenseholder supplies the wine, beer, or distilled spirits used in*
34 *the instructional event and provides or pays for a person to serve*
35 *the wine, beer, or distilled spirits.*

36 *(d) No more than one authorized licensee, or its designated*
37 *representative, may conduct an instructional event that includes*
38 *the serving of tastes of wine, beer, or distilled spirits at any one*
39 *individual licensed premises of a licenseholder per day.*

1 (e) A licenseholder that also holds an on-sale beer and wine
2 license, an on-sale beer and wine eating place license, or an
3 on-sale general license shall not allow an authorized licensee, or
4 its designated representative, to conduct an instructional event at
5 the same time and location as an instructional event held pursuant
6 to Section 23386, 25503.5, or 25503.55.

7 (f) A licenseholder shall not condition the allowance of an
8 instructional event upon the use of a particular designated
9 representative of an authorized licensee.

10 (g) (1) Notwithstanding any other provision of this division,
11 and in addition to any point of sale advertising or other advertising
12 items allowed under this division or under rules or regulations
13 promulgated by the department, an authorized licensee or its
14 designated representative, in his or her absolute discretion and
15 with permission of the licenseholder upon whose premises the
16 instructional event will be held, may list in an advertisement to
17 the general public the name and address of the licenseholder, the
18 names of the alcoholic beverages being featured at the instructional
19 event, and the time, date, and location of, and other information
20 about, the instructional event, provided that both of the following
21 apply:

22 (A) The advertisement does not contain the retail price of the
23 alcoholic beverages.

24 (B) The listing of the licenseholder's name and address is the
25 only reference to the licenseholder in the advertisement.

26 (2) Pictures or illustrations of the licenseholder's licensed
27 premises and laudatory references to the licenseholder in these
28 advertisements are not authorized. Nothing in this section shall
29 authorize an authorized licensee or its designated representative
30 to share in the costs, if any, of the licenseholder.

31 (h) A licenseholder may advertise an instructional event to the
32 general public. The costs of this advertising shall be borne solely
33 by the licenseholder. Advertising permitted by this subdivision
34 includes flyers, newspaper ads, Internet communications, and
35 interior signage.

36 (i) Except as otherwise provided in this division or by any rules
37 or regulations promulgated by the department, no premium, gift,
38 free goods, or other thing of value shall be given away by an
39 authorized licensee or its designated representative in connection

1 *with an instructional event that includes tastings of an alcoholic*
2 *beverage.*

3 *(j) Notwithstanding any other provision of this division or any*
4 *rules or regulations promulgated by the department, the*
5 *licenseholder or the authorized licensee or its designated*
6 *representative are authorized to perform set up and break down*
7 *of the instructional event area. The authorized licensee or its*
8 *designated representative may provide, free of charge to the*
9 *licenseholder, the equipment, materials, and utensils that may be*
10 *required during the instructional event.*

11 *(k) (1) A licenseholder shall not require, or enter into a*
12 *collusive scheme with an authorized licensee or its designated*
13 *representative to conduct one or more instructional events as a*
14 *condition of the licenseholder carrying or continuing to carry a*
15 *brand or brands of the authorized licensee or as a condition for*
16 *display or other merchandising plan which is based on an*
17 *agreement to provide shelf space. An authorized licensee or its*
18 *designated representative shall not require any preferential*
19 *treatment or benefit from, or enter into a collusive scheme with,*
20 *a licenseholder as a condition of conducting one or more*
21 *instructional events, require a licenseholder to carry or continue*
22 *to carry a brand or brands of the authorized licensee as a condition*
23 *of conducting one or more instructional events, or condition display*
24 *or other merchandising plans that are based on agreements for*
25 *the provision of shelf space on the conducting of one or more*
26 *instructional events. Any agreement, whether written or oral,*
27 *entered into by and between a licenseholder and an authorized*
28 *licensee that precludes the conducting of instructional events on*
29 *the premises of the licenseholder by any other authorized licensee*
30 *is prohibited.*

31 *(2) In addition to any other remedies available under this*
32 *division, upon a finding by the department of a failure to comply*
33 *with this subdivision, the department shall suspend the instructional*
34 *tasting license of the licenseholder and the privilege of the*
35 *authorized licensee to conduct instructional events for not less*
36 *than six months but for no more than one year.*

37 *SEC. 3. No reimbursement is required by this act pursuant to*
38 *Section 6 of Article XIII B of the California Constitution because*
39 *the only costs that may be incurred by a local agency or school*
40 *district will be incurred because this act creates a new crime or*

1 *infraction, eliminates a crime or infraction, or changes the penalty*
2 *for a crime or infraction, within the meaning of Section 17556 of*
3 *the Government Code, or changes the definition of a crime within*
4 *the meaning of Section 6 of Article XIII B of the California*
5 *Constitution.*

6 ~~SECTION 1. Section 19412 of the Business and Professions~~
7 ~~Code is amended to read:~~

8 ~~19412. (a) “Conventional parimutuel pool” means the total~~
9 ~~wagers under the parimutuel system on any horse or horses in a~~
10 ~~particular race to win, place, or show.~~

11 ~~(b) “Exotic parimutuel pool” means the total wagers under the~~
12 ~~parimutuel system on the finishing position of two or more horses~~
13 ~~in a particular race, such as quinella or exacta wagers, or on horses~~
14 ~~to win two or more races, such as daily double wagers, pick six~~
15 ~~wagers, or on other wagers approved by the board.~~

16 ~~(c) “Proposition parimutuel pool” means the total wagers under~~
17 ~~the parimutuel system on propositions approved by the board that~~
18 ~~are based on the results of a live thoroughbred horse, quarter horse,~~
19 ~~or harness horse race or races.~~